

262

Original.

*Notice to the Attorney General.*

(Filed January 16, 1913.)

United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-  
JOHNSON LUMBER COMPANY, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent.

The President of the United States to Honorable George W. Wickersham, as Attorney General of the United States:

You are hereby notified that a petition has been filed in the above entitled case in the office of the Clerk of the United States Commerce Court at Washington, D. C., copy of which is herewith served by filing said copy in the Department of Justice.

In case no answer shall be filed to said petition within thirty days after such service, the petitioner may apply to the Court on notice for such relief as may be proper upon the facts alleged in said petition.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 14th day of January A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

Duplicate of above notice and copy of Petition served upon Honorable George W. Wickersham, Attorney General of the United States, this 15th day of January A. D. 1913. (Accepted by Blackburn Esterline.)

F. J. STAREK, *Marshal.*  
By JAMES L. MURPHY,  
*Deputy Marshal.*

263

Original.

*Notice to the Interstate Commerce Commission.*

(Filed January 16, 1913.)

United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-  
JOHNSON LUMBER COMPANY, Petitioners,  
vs.

THE UNITED STATES OF AMERICA, Respondent.

The President of the United States to John H. Marble, as Secretary  
of the Interstate Commerce Commission :

You are hereby notified that a petition has been filed in the above  
entitled case in the office of the clerk of the United States Commerce  
Court at Washington, D. C., copy of which is herewith served by  
filing said copy in the office of the Secretary of the Interstate Com-  
merce Commission.

In case no answer shall be filed to said petition within thirty days  
after such service, the petitioner may apply to the Court on notice  
for such relief as may be proper upon the facts alleged in said  
petition.

Witness the Honorable Martin A. Knapp, Presiding Judge of the  
United States Commerce Court, this 14th day of January A. D.,  
1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

Duplicate of above notice and copy of Petition served upon John  
H. Marble, Secretary of the Interstate Commerce Commission, this  
15th day of January A. D., 1913.

F. J. STAREK, *Marshal.*  
By JAMES L. MURPHY,  
*Deputy Marshal.*

264 In the United States Commerce Court, February Session,  
1913.

## No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-  
JOHNSON LUMBER COMPANY, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent.

*Motion of the United States to Dismiss the Petition.*

(Filed February 8, 1913.)

Comes now the United States of America, respondent, by its counsel, and moves the court to dismiss the above-entitled cause, upon the following grounds, viz:

1. The Commerce Court is without jurisdiction or authority to grant the relief prayed, or any part of the same, because—

(a) The order of the Interstate Commerce Commission is negative, in that, in the absence of the Frost-Johnson Lumber Company, which is not a proper party to this proceeding, except on its own motion, any relief granted against the United States would be of no avail to the Mansfield Railway & Transportation Company in restoring the status quo of the parties.

265 (b) The order of the Interstate Commerce Commission complained of directed no affirmative relief, and the negative order of the commission affords no basis for any action by the Commerce Court.

(c) The same relief which is sought of the Commerce Court was denied by the Interstate Commerce Commission, and the Commerce Court has no power or authority to act for and instead of the said commission.

2. The Commerce Court is without jurisdiction or authority to grant the relief prayed, or any part of the same, because—

(a) The Mansfield Railway & Transportation Company is not a common carrier engaged in commerce among the several States.

(b) The suit is not one commenced by a common carrier engaged in commerce among the several States, but is commenced in the name and on behalf of the Frost-Johnson Lumber Company, engaged in the manufacture and sale of lumber.

(c) The Mansfield Railway & Transportation Company and Frost-Johnson Lumber Company seek to compel the Interstate Commerce Commission to accept, receive, and file tariffs and schedules of rates and charges prescribing through routes and joint rates with the interstate carriers after the commission has negatively ordered otherwise.

(d) The said Mansfield Railway & Transportation and Frost-Johnson Lumber Company seek to invoke the jurisdiction of the Commerce Court to entertain a controversy not contemplated by the act to create a Commerce Court, in that the Mans-  
266 field Railway & Transportation Company and the United

States are but nominal parties, and the real controversy will be conducted and carried on by, between and in the interest of the said lumber company and certain common carriers subject to the act to regulate commerce.

(c) The power to establish through routes and joint rates under the act to regulate commerce is reposed exclusively in the carriers, and in the event of their failure to agree, exclusively in the Interstate Commerce Commission under section 15 of the said act.

3. The said Mansfield Railway & Transportation Company and Frost-Johnson Lumber Company are and each of them is, without any standing in a court of equity to enjoin, set aside, annul, or suspend the order of the Interstate Commerce Commission, on the ground that the Mansfield Railway & Transportation Company is a common carrier engaged in commerce among the several States; for that if the said Mansfield Railway & Transportation Company is a common carrier engaged in commerce among the several States, then it and the said lumber company, as one and the same enterprise, are unlawfully transporting in interstate commerce commodities manufactured, produced, and otherwise dealt in by them, and in which they have an interest, direct and indirect in violation of section 1 of the act to regulate commerce.

4. The Mansfield Railway & Transportation Company and Frost-Johnson Lumber Company have no standing in a court of  
267 equity to maintain an action to enjoin set aside, annul, or suspend the order of the Interstate Commerce Commission, for that the allowances create illegal preferences and discriminations on the part of certain common carriers engaged in commerce among the several States in favor of Frost-Johnson Lumber Company, the principal petitioner, in violation of the act to regulate commerce, approved February 4, 1887, and the various acts amendatory thereof or supplementary thereto, or certain of the provisions thereof.

5. That the incorporation of the Mansfield Railway & Transportation Company, and the use of the same, is a mere device and subterfuge for the purpose of giving the appearance of legality to proposed illegal arrangements between Frost-Johnson Lumber Company and certain common carriers engaged in commerce among the several States, and for the further purpose of covering up the unlawful preferences, discriminations, and rebates growing out of the same.

6. There is a misjoinder of parties because, according to the statute, Frost-Johnson Lumber Company is not a necessary or proper party, or a permissible party, except on its own motion, to this proceeding, and then as intervener only.

7. The petitioners are, and each of them is, estopped from assailing the validity of the order of the Interstate Commerce Commission, as the said order was entered upon the request and with the consent of the said petitioners and each of them.

268 8. The petitioners have not in and by their said petition shown that in making its said order the Interstate Commerce Commission transcended the powers conferred upon it by the statute, or violated any right of petitioners protected by the Con-

stitution of the United States, or any other right of the petitioners over which this court may exercise jurisdiction.

9. The petition is vague, indefinite, uncertain, and insufficient in that it contains much irrelevant and immaterial matter, and abounds in conclusions and assumptions of the pleader without facts to support the same.

10. The said petition is insufficient to set forth a cause of action upon which the court may grant the relief prayed, or any part of the same.

Wherefore, and for divers other good causes appearing from the face of the said petition more fully to be pointed out upon the hearing hereof, this respondent prays that its motion be sustained, and that the said petition be dismissed at the petitioners' cost and that it be not required to make any answer thereto; and for such other and further action as may be appropriate in the premises.

BLACKBURN ESTERLINE,

*Special Assistant to the Attorney General.*

269

*Journal Entry.*

Proceedings of February 10, 1913.

Case Nos. 90, 91, 92, 93.

No. 90.

LOUISIANA & PACIFIC RAILWAY Co. et al., Petitioners,

vs.

THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 91.

WOODWORTH & LOUISIANA CENTRAL RY. Co., LIMITED, et al., Petitioners,

vs.

THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION Co., et al., Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

No. 93.

VICTORIA, FISHER & WESTERN R. R. Co. et al., Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Thereupon these causes came on for hearing upon the motion of the United States to dismiss for want of jurisdiction in open court

made, and the arguments of counsel were concluded, Mr. Assistant Attorney General Denison and Mr. Blackburn Esterline appearing on behalf of the United States, Mr. Charles W. Needham on behalf of the Interstate Commerce Commission, Mr. Luther M. Walter and Mr. H. M. Garwood on behalf of the petitioners, Mr. James L. Coleman on behalf of the intervening carriers, and Mr. Wylie M. Barrow on behalf of the Railroad Commission of Louisiana. Thereupon the cause was taken under advisement by the Court.

270 *Order Denying Motion to Dismiss for Want of Jurisdiction.*

(Entered February 24, 1913.)

United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-JOHNSON LUMBER COMPANY, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION et al., Interveners.

Order.

The above entitled cause came on for hearing before the Court on February 10, 1913, at Washington, D. C., upon the motion of the United States to dismiss for want of jurisdiction in open court made; and the Court having given the arguments of counsel due consideration, now, on this 24th day of February, 1913,—

It is ordered and adjudged that said motion be, and the same is hereby, denied, the Court being of opinion that the order complained of is an order the validity of which this Court has jurisdiction to determine at the suit of the petitioners. The Court, however, in so deciding, in no way passes upon the merits of the case presented by the petition filed.

By the Court:

MARTIN A. KNAPP,

*Presiding Judge.*

271 In the United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-JOHNSON LUMBER COMPANY, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent.

*Answer of the United States.*

(Filed March 18, 1913.)

The United States of America, respondent, not waiving its motion to dismiss the above-entitled cause for want of jurisdiction of the

court over the subject matter, but still insisting upon its said motion and each and every part of the same, and still protesting against the court entertaining jurisdiction over the subject matter now and at all times hereafter, and answering the said petition under protest;

The United States of America, respondent, now at all time hereafter saving to itself any and all manner of benefit and advantage of exceptions or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in said petition contained, for answer thereto or to so much thereof as this respondent is advised it is material or necessary for it to make answer, answers and says:

I. It admits—

(a) The allegations of Paragraph III of the petition;  
 272 (b) The Commission made and entered the orders of September 3, 1910, and January 16, 1912, referred to in Paragraph V of the petition;

(c) The Commission made and entered the order of November 15, 1910, referred to in Paragraph VI, page 13, of the petition;

(d) The making and filing by the Commission on April 29, 1912, of Report No. 1853, entitled "Investigation and Suspension Docket No. 11, The Tap Line Case," referred to in Paragraph VI, page 15, of the petition;

(e) The making and filing by the Commission on May 14, 1912, of Supplemental Report No. 1898, entitled "Investigation and Suspension Docket No. 11, The Tap Line Case," referred to in Paragraph VI, page 17, of the petition, parts of which are set out on pages 17 to 21, inclusive, of the petition;

(f) The Commission made and entered the order of May 14, 1912, referred to on pages 21 to 27, inclusive, of the petition;

(g) The filing with the Commission of the petition referred to in Paragraph VIII of the petition, at pages 28 to 35, inclusive; and

(h) The Commission made and entered the amended order of October 30, 1912, referred to in Paragraph IX of the petition, at pages 35 to 43, inclusive.

II. It admits—

(a) Mansfield Railway & Transportation Company is a corporation;

273 (b) Frost-Johnson Lumber Company is a corporation.

III. Mansfield Railway & Transportation Company and Frost-Johnson Lumber Company are two interlocking corporations with a common ownership, control, and management, operating in the State of Louisiana, with headquarters in a single office. Texas & Pacific Railway Company and Kansas City Southern Railway Company are corporations and common carriers by railroad engaged in interstate commerce and serve the petitioners in the transportation of lumber. When Mansfield Railway & Transportation Company was organized, it owned and operated but 2 miles of track, extending from the town of Mansfield to a connection with the Texas & Pacific Railway Company at a point known as Mansfield Junction. From time to time Frost-Johnson Lumber Company laid additional tracks in and about its mills for the shifting and handling of its logs and lumber and turned the same over to Mansfield Railway &



Transportation Company for nominal considerations, the business of the said two petitioners being all the time conducted as one. In so doing, and through other various schemes and devices, the stockholders and officers of the petitioners have sought to clothe Mansfield Railway & Transportation Company with the rights and obligations of a common carrier with trunk-line connections. After so manipulating the said plant facilities and making connections with

274 Texas & Pacific Railway Company and Kansas City Southern Railway Company, and creating competition between them for the heavy traffic of Frost-Johnson Lumber Company, it and Mansfield Railway & Transportation Company with the power wielded by them in the control of the heavy traffic, are enabled to and do hammer the two competing trunk lines for allowances or divisions; by reason thereof, the petitioners are enabled to secure, and they have secured, excessive allowances and divisions from the said two trunk lines named, which are illegal rebates to Frost-Johnson Lumber Company and its stockholders, and departures from the published tariffs, and illegal preferences and discriminations forbidden by the provisions of the act to regulate commerce, approved February 4, 1887, and the various acts amendatory thereof and supplementary thereto. The said two interlocking petitioners, under the common ownership, control, and management, are so operated for the double purpose of (a) controlling the traffic and dictating the allowances and divisions to them for the traffic which they furnish, and (b) giving color of legality to the unlawful arrangements between the said two railroad companies and the petitioners.

IV. The matters and things heard and determined by the Interstate Commerce Commission were within its power and authority to hear and determine under the provisions of the act to regulate commerce, and in its reports in writing with respect thereto, made after a full hearing and due notice to all the parties, which state its conclusions, together with its decision, order, or requirement in 275 the premises, the matters and things of which complaint is made were fully covered and foreclosed by findings of fact.

V. Further answering the said petition and each and every part of the same in so far as it has not heretofore been admitted, denied, or otherwise traversed, this respondent denies any fact or facts alleged in said petition or any part of the same which deny or which seek to deny any fact or facts found by the Interstate Commerce Commission in its said reports and order; and denies any fact or facts alleged in said petition or any part of the same which are inconsistent with any fact or facts found by the Interstate Commerce Commission in its said reports and order; and denies any and all inferences of fact from any particular fact or facts alleged in the said petition or any part of the same which seek to deny or which are inconsistent with any fact or facts found by the Interstate Commerce Commission in its said reports and order; and denies any fact or facts alleged in said petition or any part of the same which set up or which seek to set up matters and things which were not before the Interstate Commerce Commission or which are not referred to in its said reports and order; and denies any fact or facts alleged in said petition or any part of the same which attack or which seek to



attack the reports and order of the Interstate Commerce Commission and to show facts differently from what the said reports and order show on the face thereof; and denies any allegations  
 276 in said petition or any part of the same which allege that facts were found by the Interstate Commerce Commission in its said reports and order which, as shown on the face thereof, in fact were not so found; and denies any conclusions of law alleged and insisted upon in the said petition or any part of the same which are inconsistent with any conclusions of law held by the Interstate Commerce Commission in its said reports and order.

And this respondent now gives notice that upon the final hearing hereof, and in accordance with section 1 of the act entitled "An act to create a Commerce Court," etc., approved June 18, 1910, it will move to dismiss the petition, for that the same is insufficient to state any cause of action against the said respondent and will renew and urge in support thereof the grounds of its written motion already filed in that behalf.

Wherefore, having fully answered, respondent prays that the petition be dismissed at the cost of the petitioners, and for such other and further order as may be appropriate in the premises.

BLACKBURN ESTERLINE,  
*Special Assistant to the Attorney General.*

March, 1913.

277

In the United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-  
 JOHNSON LUMBER COMPANY, Petitioners,

v.

THE UNITED STATES OF AMERICA, Respondent.

*Answer of the Interstate Commerce Commission.*

(Filed February 8, 1913.)

The Interstate Commerce Commission, intervening respondent in the above-entitled cause, now and at all times saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' petition contained, for answer thereunto, or unto so much or such parts thereof as this respondent is advised is material for it to make answer unto, answering says:

# I.

That this court has no jurisdiction of the controversy, matters  
 278 and things respectively set forth in said petition, nor does it possess general equity jurisdiction to grant the relief, or any part thereof, prayed for.

## II.

This respondent admits that it made and entered the order set forth in said petition bearing date September 3, 1910, in the Matter of the Investigation and Suspension of Supplement No. 3 to I. C. C. No. 23; that it made and entered the order of January 16, 1912, set forth in said petition. It admits and alleges that after due and full hearing, as required by the statute, it made and filed in the proceeding known as Investigation and Suspension Docket No. 11, its original report, under date, April 23, 1912, which report is set forth in volume 23 of its printed reports (I. C. C. Rep.) beginning at page 277, and thereafter—May 14, 1912—it made and filed the supplemental report set forth in said petition and in said volume 23 (I. C. C. Rep.) beginning at page 549; that on the 14th day of May, 1912, it made and entered the order in said matter set forth in said petition.

This respondent admits the filing of the petition by L. M. Walter, attorney for petitioners, as set forth in said petition, and that thereafter, on October 30, 1912, this respondent, at the request of said petitioners, made and entered the amended order set forth in said petition. This respondent admits that it made the decision and report referred to in said petition and reported in its published reports, volume 17 (I. C. C. Rep.), beginning at page 338; 279 and this respondent admits that the trunk lines, so called in said petition, withdrew their tariffs and filed new tariffs at the times, and substantially in form as stated in said petition.

## III.

This respondent neither admits nor denies the particular matters and things set forth in said petition regarding the organization of the several petitioning companies, and the several stockholdings set forth in said petition, nor has it any knowledge regarding the business and the amount thereof of the several petitioners or of either of them, excepting as the facts relevant and pertinent to the issue were proved in the said proceedings and matters before this respondent, in which matters the said reports and orders of this respondent were entered; and this respondent avers that the facts presented to and the conclusions reached thereon by this respondent in said investigation (I. and S. D. No. 11), regarding the said allegations contained in the petition herein, are set forth in the original report thereof, appearing in volume 23 of this respondent's published reports (I. C. C. Rep.), beginning at page 277, and in the supplemental report in said investigation reported in said volume 23, beginning at page 549, and in the several orders entered thereon; and this respondent makes said original and supplemental reports and each of them, and the orders entered thereon, a part of this answer for and as its statement of the facts in this controversy; and respondent begs leave to make the same use of said published reports in its defense herein as it could make if the original and supplemental reports and said orders respectively were each set forth in full in this answer. 280

## IV.

This respondent denies each and every allegation in said petition which in effect or by inference alleges that this respondent in the matters aforesaid erroneously determined or decided any questions of law, or that it acted in any respect arbitrarily, or that this respondent in making said orders, or either of them, herein complained of, acted without substantial evidence produced at said hearing to support the same, or that in the making and enforcement of said orders, herein complained of, or either of them, the petitioners, or either of them, have suffered or will suffer any violation or infraction of their constitutional rights or privileges.

This respondent denies each and every allegation in said petition not herein expressly admitted, or which is contrary to the — or any facts stated in this answer or in respondent's said original or supplemental reports or orders.

All of which matters and things this respondent is ready to aver, maintain, and prove as this honorable court shall direct, and prays the same advantage as to each and all the matters and things aforesaid as this respondent would be entitled to if the same were specially pleaded, or set forth by way of demurrer, or motion to dismiss the petition.

281 And having fully answered said petition, this respondent prays to be hence dismissed with its reasonable costs and charges in its behalf sustained.

INTERSTATE COMMERCE COMMISSION,  
By CHARLES W. NEEDHAM, *Its Solicitor*.

CITY OF WASHINGTON,  
*District of Columbia, ss:*

James S. Harlan, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-entitled respondent, and makes this affidavit on behalf of said commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true as to the matters within the knowledge of the commission, and as to the other matters he believes it to be true.

JAMES S. HARLAN.

Subscribed and sworn to before me, Geo. F. Graham, a notary public within and for the District of Columbia, this 8th day of February, 1913.

[SEAL.]

GEO. F. GRAHAM,  
*Notary Public*.

282 *Petition of A., T. & S. F. Ry. Co. et al. for Leave to Intervene.*

(Filed February 10, 1913.)

In the United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al., Petition-  
ers,  
v.  
THE UNITED STATES OF AMERICA, Respondent.

Petition for Leave to Intervene.

Come now The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, and say that they were parties to the original proceedings before the Interstate Commerce Commission, out of which the above entitled litigation springs, and that they are interested directly and financially in any disposition of this cause, and therefore they ask an order allowing them to intervene and to be heard in all proceedings in said cause, and to have the benefit of all orders and decrees that may be entered herein.

Your intervening petitioners further state that they are common carriers by railroad with rails extending from extensive lumber producing territory to various markets; that the milling industries located upon the railroads of intervening petitioners are competitors with the milling industries located upon the line of petitioners; that the through rates applying for the carriage of lumber from the industries located upon the lines of intervening petitioners and the milling industries located upon the lines of petitioners are known as the blanket system of rates.

283 Your intervening petitioners further state that they make no allowance or division of through rates to tap lines or to milling industries on the lines of intervening petitioners, and as a result the milling industries located upon the lines of intervening petitioners are required to pay in full the lawfully published tariff rate on lumber. Your intervening petitioners further state that the allowance to said petitioners of a division of the through rate will give said petitioners an undue advantage over the milling industries located upon the lines of intervening petitioners, and will constitute an unjust discrimination against such milling industries located upon the lines of intervening petitioners, and will be in violation of the Interstate Commerce law.

Your intervening petitioners further state that any allowance to the petitioners herein will not be in truth an allowance to a railroad for the service of transportation of lumber but on the contrary will be an allowance to the milling industry for an operation incident to the manufacture of lumber, and will constitute a device

for the payment of a rebate to a shipper, in violation of the Interstate Commerce Law.

THE ATCHISON, TOPEKA AND SANTA  
FE RAILWAY COMPANY,  
GULF, COLORADO AND SANTA FE  
RAILWAY COMPANY,

By ROBERT DUNLAP,  
T. J. NORTON,  
JAMES L. COLEMAN,

*Their Attorneys.*

February 10, 1913.

284

In the United States Commerce Court.

No. 92.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY et al.

vs.

UNITED STATES OF AMERICA et al.

*Order of Intervention.*

(Entered February 10, 1913.)

The Atchison, Topeka & Santa Fe Railway Company, and Gulf, Colorado and Santa Fe Railway Company having filed and presented their petition for intervention herein and it appearing to the Court from the said petition that the petitioners have shown that they have sufficient interest in the proceedings herein to entitle them to intervene and be heard by their counsel:

It is ordered, That The Atchison, Topeka and Santa Fe Railway Company and Gulf, Colorado and Santa Fe Railway Company be and they are hereby allowed to intervene and become parties intervenor and to be heard by their counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said intervenors to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said intervenors and their course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,  
*Presiding Judge.*

285

In the United States Commerce Court.

No. 92.

MANSFIELD RAILWAY &amp; TRANSPORTATION COMPANY and Frost-Johnson Lumber Company, Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent.

*Reply to Intervening Petition of the Atchison, Topeka and Santa Fe Railway, and Gulf, Colorado and Santa Fe Railway Company.*

(Filed February 26, 1913.)

Comes now the Mansfield Railway & Transportation Company and Frost-Johnson Lumber Company, Petitioners herein, and ask leave of the Court to file this, their reply to the petition of intervention filed herein by The Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company.

Petitioners admit that intervenors were parties to the original proceeding before the Interstate Commerce Commission, out of which the above entitled suit originated.

286 Petitioners further admit that the intervenors are "interested directly and financially in any disposition of this cause." Petitioners further admit that intervenors are common carriers by railroad, with rails extending from "extensive lumber producing territory to various markets"; that the milling industries located upon the lines of intervenors are competitors with the milling industries located upon the line of the petitioner, Mansfield Railway & Transportation Company; that the through rates applying for the carriage of lumber from the industries located upon the lines of intervenors is known as the blanket system of rates, but these petitioners deny that the rates applying for the carriage of lumber from points upon the line of the petitioner, Mansfield Railway & Transportation Company, is the joint rate commonly known as the blanket rate from the yellow pine producing territory. On the contrary, these petitioners aver that milling industries such as the petitioner, Frost-Johnson Lumber Company, are compelled to pay the blanket rate from the junction point with the trunk lines to consuming territory, plus the local charge of the petitioner, Mansfield Railway & Transportation Company, from the mill to such junction point.

Petitioners further allege that while the intervenors may compel their shippers to pay in full the lawfully published tariff rate on lumber and may make no allowance or division of through rates to tap-lines or milling industries, petitioners aver that the intervenors make concessions, or other arrangements, whereby an undue preference is accorded many shippers from points upon the lines of intervenors as compared with the petitioner, Frost-Johnson

287 Lumber Company, as will more particularly appear herein.

Petitioners deny that any allowance to the petitioner,

Mansfield Railway & Transportation Company, out of the joint through rates, will give these petitioners any undue advantage over milling industries located upon the lines of the intervenors or that such allowance will constitute any unjust discrimination, or otherwise be any violation of the Interstate Commerce law. Your petitioners further deny that such an allowance to the Mansfield Railway & Transportation Company is, or will be, any allowance to the milling industries of the petitioner, Frost-Johnson Lumber Company. On the contrary, these petitioners assert that the service performed by the Mansfield Railway & Transportation Company in moving lumber from the plant of the Frost-Johnson Lumber Company to the Kansas City Southern Railway or the Texas & Pacific Railway is a service of transportation within the meaning of the Act to Regulate Commerce.

Petitioners deny that any allowance to the petitioner, Mansfield Railway & Transportation Company, out of the joint rate, in any way constitutes a device for the payment of a rebate to a shipper, or is otherwise any violation of the Interstate Commerce Law.

Your petitioners affirmatively show unto this honorable court that the intervenors, about the year 1902, purchased from John H. Kirby and his associates two short-line railways, to-wit: the Gulf, Beaumont & Kansas City and the Gulf, Beaumont & Great North-

288 ern, both of which railways penetrated the most productive yellow pine territory in Texas. At that time, the said

Kirby and his associates were large holders of yellow pine timber lands; that about the same time these intervenors made a contract with said Kirby by which said intervenors agreed, so far as they lawfully could do so, to cancel all through rates on lumber with all of their railway connections, both trunk lines and short lines. Shortly thereafter the said Kirby and his associates organized the Kirby Lumber Company and the Houston Oil Company, both corporations of the State of Texas. Your petitioners aver that it appeared before the Interstate Commerce Commission in the record in the so-called tap-line case that the said Kirby and his associates, through said corporations and their personal holdings, obtained the control of approximately nine hundred thousand acres of yellow pine timber land. The purpose of said Kirby and his associates was shown to be to obtain the practical control of all yellow pine producing territory in southeastern Texas and southwestern Louisiana.

Petitioners further aver that it appeared in evidence before the said Commission that the lands of the Kirby Lumber Company and of John H. Kirby passed into the hands of intervenor, Atchison, Topeka & Santa Fe Railway Company, which now holds a legal title to said lands, the said Kirby holding an option to re-purchase the same. It further was shown to the said Commission that these lands are held for the intervenor, Atchison, Topeka & Santa Fe Railway Company under the name of J. R. Chapman.

289 Petitioners further allege that it was shown to the said Commission in said hearing that the intervenor, Atchison, Topeka & Santa Fe Railway Company, acquired through the in-



strumentality of said Kirby, a vast body of lands in the same territory, known as the "Kountze lands," consisting of one hundred and eighty-seven thousand acres of yellow pine timber. Through an operating contract with the Kirby Lumber Company the timber output of the Houston Oil Company lands is manufactured and controlled by said Kirby Lumber Company.

Petitioners allege that these entire holdings, most of which are immediately adjacent and tributary to the east Texas lines of intervenors, comprise one million and eighty-seven thousand acres, and are generally estimated to contain about eight billion feet of lumber. The Bureau of Corporations of the United States, in its recent report, Senate Document No. 818, estimates privately owned timber in the State of Texas to amount to sixty-six billion feet. It therefore appears that practically one-eighth of the yellow pine timber of Texas is controlled by intervenors.

Petitioners further allege that it was shown to the Interstate Commerce Commission that the Kirby Lumber Company operates thirteen mills, all of which, with one or two exceptions, are located upon the lines of intervenors and all the tonnage produced from the aforesaid holdings by the Kirby Lumber Company east of the Neches River, is tied by contracts to the intervenors.

290 Prior to the hearing before the Commission, and subsequent to the year 1902, intervenors, or persons acting for them, organized the Southwestern Lumber Company, a corporation of the State of Texas, and sold to the Industrial Lumber Company sixty-five thousand acres for an approximate consideration of Three Million Dollars, the deferred payments upon which bore interest at the rate of four and one-half per cent. per annum (the current rate of interest at the time of the transaction being from six to eight per cent.).

Petitioners allege that the Kirby Lumber Company and Industrial Lumber Company were parties to the proceeding before the Commission in which the order complained of by petitioners was made.

Petitioners allege that it was shown to the said Commission that the expenditures incident to the acquisition of the said immense timber holdings by the intervenors in southeastern Texas and southwestern Louisiana approximated eight million dollars.

Petitioners allege that the contract above mentioned between intervenors and said John H. Kirby was intended to, and did, give the said Kirby and his associates an undue and unlawful advantage in marketing yellow pine lumber over the lines of the intervenors.

Petitioners allege that there was filed before the Interstate Commerce Commission in the said tap-line record, a copy of an answer filed by the said Kirby and the Kirby Lumber Company in the Circuit Court of the United States for the Southern District of Texas

291 in the case of Maryland Trust Company, trustee, vs. Kirby Lumber Company and Houston Oil Company, wherein it appeared, in the thirteenth paragraph, that

"said Atchison & Santa Fe Railroad, under said contract with said Kirby, of which said Kirby Lumber Company is a beneficiary, had

canceled all through and joint rates on lumber with connecting lines, thereby giving the lumber manufacturers located along the lines of said Atchison Railroad an advantage in freight rates in reaching all points located on the line of the said Atchison Railroad system."

The paragraph further provides that

"(it) would give said Kirby Lumber Company an advantage of about one dollar per thousand feet over and above what its competitors, located on other lines of railway, could realize from the shipments to points reached by said Atchison Railroad, and this for the reason that said Atchison & Santa Fe Railroad, under said contract with said Kirby, of which said Kirby Lumber Company is a beneficiary, had canceled all through and joint rates on lumber with the connecting lines, thereby giving the lumber manufacturers located along the lines of said Atchison Railroad an advantage in freight rates in reaching all points located on the line of the said Atchison Railroad system."

As disclosed by the thirteenth, fourteenth and fifteenth paragraphs of said answer, it was the purpose at that time of the Kirby Lumber Company to acquire the Kountze lands above referred to, which the intervenors subsequently acquired as above stated; and it is alleged in the fourteenth paragraph of said answer

292 "That the arrangement herein stated, between said Kirby and said Atchison, Topeka & Santa Fe Railroad, of which said defendant Kirby Lumber Company is a beneficiary, is not, and under the law could not be, exclusively for his benefit, but would apply equally to all shippers along the lines of the Gulf, Colorado & Santa Fe Railway Company; that if said Houston Oil Company of Texas acquired said Kountze lands, then there would be no other large bodies of lands along the lines of said Atchison Railroad not owned by either said Houston Oil Company of Texas or said Kirby Lumber Company, to tempt competitors, wherefore such regulation by said Atchison Railroad would practically result in said Kirby Lumber Company being the sole beneficiary thereof."

Petitioners further allege that the only complaining parties against tap-line allowances in the hearing before the Commission were the Kirby Lumber Company, the Miller Link Company, the Industrial Lumber Company, the Lutch-Moore Lumber Company, Alexander-Miller Company and Ludington, Wells & VanShaick Lumber Company, all of which, with the exception of the Lutch-Moore and Miller Link Companies, were directly tributary to the lines of the intervenors herein. It appeared before the Commission that the Southwestern Lumber Company, of which President E. P. Ripley of the intervenors and his associates were the officers, sold to the Industrial Lumber Company sixty-five thousand acres of pine land for approximately three million dollars, and at the time of the taking of the testimony before the Commission about two and one-half million dollars was still unpaid and drawing interest at four and one-half per cent. per annum, while the current rate  
293 of interest, which your petitioners pay, was from six to eight per cent.

It appears from the published reports of the Interstate Commerce Commission that the said intervenors did cancel, or cause to be canceled, joint rates from points on their lines to points on other lines of railroad in large lumber consuming territory of the United States. In the original Star Grain case through rates were ordered by the Commission via the St. Louis Southwestern Railway Company and the intervenors.

Petitioners, in view of the foregoing and upon information and belief, allege that the intervenors have stirred up and instigated litigation before the Interstate Commerce Commission and are participating herein for the sole purpose of monopolizing the transportation and trade in yellow pine lumber between points upon its line. Petitioners further allege that intervenors have in control and operation to-day a mill at Merryville, in the State of Louisiana, whose product is shipped to various points in the United States and is in competition with the lumber produced by the petitioner, Frost-Johnson Lumber Company.

Your petitioners further allege that the order complained of by petitioners herein, if allowed to remain effective, will make it easier for the intervenors to succeed in their plans to monopolize the aforesaid trade and transportation in yellow pine lumber.

Your petitioners therefore say that the aforesaid facts 293½ abundantly show that the order of the Commission constitutes an unjust discrimination and undue preference in violation of the Act to Regulate Commerce and should be enjoined and set aside.

Your petitioners therefore pray as in the original petition.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY,

FROST-JOHNSON LUMBER COMPANY,

By H. M. GARWOOD AND  
LUTHER M. WALTER,

*Their Solicitors.*

## In the United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al.,  
Petitioners,

vs.

THE UNITED STATES OF AMERICA et al., Respondents; THE ATCHISON, Topeka and Santa Fe Railway Company and Gulf, Colorado and Santa Fe Railway Company, Intervening Petitioners.

*Motion of the Atchison, Topeka and Santa Fe Railway Company and Gulf, Colorado and Santa Fe Railway Company to Strike Out Certain Scandalous, Impertinent and Irrelevant Matter Contained in the Reply of the Mansfield Railway and Transportation Company and Frost-Johnson Lumber Company, and Suggestions in Support of said Motion.*

(Filed March 8, 1913.)

Come now The Atchison, Topeka and Santa Fe Railroad Company and the Gulf, Colorado and Santa Fe Railway Company, Intervening Petitioners herein, and respectfully move the court to strike from the reply of the Mansfield Railway and Transportation Company and Frost-Johnson Lumber Company, Petitioners, to the intervening petition of The Atchison, Topeka and Santa Fe Railway Company and the Gulf, Colorado and Santa Fe Railway Company the following, on the ground that the same is scandalous, impertinent and irrelevant:

"Petitioners further allege that while the intervenors may compel their shippers to pay in full the lawfully published tariff rate on lumber and may make no allowance or division of through rates to tap-lines or milling industries, petitioners aver that the intervenors make concessions, or other arrangements, whereby an undue preference is accorded many shippers from points upon the lines of intervenors as compared with the petitioner, Frost-Johnson Lumber Company, as will more particularly appear herein."

(The above being contained on page 2 of said reply.)

"Your petitioners affirmatively show unto this honorable court that the intervenors, about the year 1902, purchased from John H. Kirby and his associates two short-line railways, to-wit: the Gulf, Beaumont & Kansas City and the Gulf, Beaumont & Great Northern, both of which railways penetrated the most productive yellow pine territory in Texas. At that time, the said Kirby and his associates were large holders of yellow pine timber lands; that about the same time these intervenors made a contract with said Kirby by which said intervenors agreed, so far as they lawfully could do so, to cancel all through rates on lumber with all of their railway connections, both trunk lines and short lines. Shortly thereafter the said Kirby and his associates organized the Kirby Lumber Company and the

Houston Oil Company, both corporations of the state of Texas. Your petitioners aver that it appeared before the Interstate Commerce Commission in the record in the so-called tap-line case that the said Kirby and his associates, through said corporations and their personal holdings, obtained the control of approximately nine hundred thousand acres of yellow pine timber land. The purpose of said Kirby and his associates was shown to be to obtain the practical control of all yellow pine producing territory in southeastern Texas and southwestern Louisiana.

296 Petitioners further aver that it appeared in evidence before the said Commission that the lands of the Kirby Lumber Company and of John H. Kirby passed into the hands of intervenor, Atchison, Topeka & Santa Fe Railway Company, which now holds a legal title to said lands, the said Kirby holding an option to repurchase the same. It further was shown to the said Commission that these lands are held for the intervenor, Atchison, Topeka & Santa Fe Railway Company under the name of J. R. Chapman.

Petitioners further allege that it was shown to the said Commission in said hearing that the intervenor, Atchison, Topeka & Santa Fe Railway Company, acquired through the instrumentality of said Kirby, a vast body of lands in the same territory, known as the "Kountze lands," consisting of one hundred and eighty-seven thousand acres of yellow pine timber. Through an operating contract with the Kirby Lumber Company the timber output of the Houston Oil Company lands is manufactured and controlled by said Kirby Lumber Company.

Petitioners allege that these entire holdings, most of which are immediately adjacent and tributary to the east Texas lines of intervenors, comprise one million and eighty-seven thousand acres, and are generally estimated to contain about eight billion feet of lumber. The Bureau of Corporations of the United States, in its recent report, Senate Document No. 818, estimates privately owned timber in the State of Texas to amount to sixty-six billion feet. It therefore appears that practically one-eighth of the yellow pine timber of Texas is controlled by intervenors.

Petitioners further allege that it was shown to the Interstate Commerce Commission that the Kirby Lumber Company operates thirteen mills, all of which, with one or two exceptions, are located upon the lines of intervenors and all the tonnage produced from the aforesaid holdings by the Kirby Lumber Company east of the Neches River, is tied by contracts to the intervenors.

297 Prior to the hearing before the Commission, and subsequent to the year 1902, intervenors, or persons acting for them, organized the Southwestern Lumber Company, a corporation of the State of Texas, and sold to the Industrial Lumber Company sixty-five thousand acres for an approximate consideration of Three Million Dollars, the deferred payments upon which bore interest at the rate of four and one-half per cent. per annum (the current rate of interest at the time of the transaction being from six to eight per cent.).

Petitioners allege that the Kirby Lumber Company and Industrial Lumber Company were parties to the proceeding before the

Commission in which the order complained of by petitioners was made.

Petitioners allege that it was shown to the said Commission that the expenditures incident to the acquisition of the said immense timber holdings by the intervenors in southeastern Texas and southwestern Louisiana approximated eight million dollars.

Petitioners allege that the contract above mentioned between intervenors and said John H. Kirby was intended to, and did, give the said Kirby and his associates an undue and unlawful advantage in marketing yellow pine lumber over the lines of the intervenors.

Petitioners allege that there was filed before the Interstate Commerce Commission in the said tap-line record, a copy of an answer filed by the said Kirby and the Kirby Lumber Company in the Circuit Court of the United States for the Southern District of Texas in the case of Maryland Trust Company, trustee, vs. Kirby Lumber Company and Houston Oil Company, wherein it appeared, in the thirteenth paragraph, that

'said Atchison & Santa Fe Railroad, under said contract with said Kirby, of which said Kirby Lumber Company is a beneficiary, had canceled all through and joint rates on lumber with connecting lines, thereby giving the lumber manufacturers located along the lines of said Atchison Railroad an advantage in freight rates in reaching all points located on the line of the said Atchison Railroad system.'

298      The paragraph further provides that

'(it) would give said Kirby Lumber Company an advantage of about one dollar per thousand feet over and above what its competitors, located on other lines of railway, could realize from the shipments to points reached by said Atchison Railroad, and this for the reason that said Atchison & Santa Fe Railroad, under said contract with said Kirby, of which said Kirby Lumber Company is a beneficiary, had canceled all through and joint rates on lumber with the connecting lines, thereby giving the lumber manufacturers located along the lines of said Atchison Railroad an advantage in freight rates in reaching all points located on the line of the said Atchison Railroad system.'

As disclosed by the thirteenth, fourteenth and fifteenth paragraphs of said answer, it was the purpose at that time of the Kirby Lumber Company to acquire the Kountze lands above referred to, which the intervenors subsequently acquired as above stated; and it is alleged in the fourteenth paragraph of said answer

'That the arrangement herein stated, between said Kirby and said Atchison, Topeka & Santa Fe Railroad, of which said defendant Kirby Lumber Company is a beneficiary, is not, and under the law could not be, exclusively for his benefit, but would apply equally to all shippers along the lines of the Gulf, Colorado & Santa Fe Railway Company; that if said Houston Oil Company of Texas acquired said Kountze lands, then there would be no other large bodies of lands along the lines of said Atchison Railroad not owned by either said Houston Oil Company of Texas or said Kirby Lumber Com-

pany, to tempt competitors, wherefore such regulation by said Atchison Railroad would practically result in said Kirby Lumber Company being the sole beneficiary thereof.'

Petitioners further allege that the only complaining parties against tap-line allowances in the hearing before the Commission were the

299 Kirby Lumber Company, the Miller Link Company, the Industrial Lumber Company, the Lutcher-Moore Lumber Company, Alexander-Miller Company and Ludington, Wells & Van Shaick Lumber Company, all of which, with the exception of the Lutcher-Moore and Miller Link Companies, were directly tributary to the lines of the intervenors herein. It appeared before the Commission that the Southwestern Lumber Company, of which President E. P. Ripley of the intervenors and his associates were the officers, sold to the Industrial Lumber Company sixty-five thousand acres of pine land for approximately three million dollars, and at the time of the taking of the testimony before the Commission about two and one-half million dollars was still unpaid and drawing interest at four and one-half per cent. per annum, while the current rate of interest, which your petitioners pay, was from six to eight per cent.

It appears from the published reports of the Interstate Commerce Commission that the said intervenors did cancel, or cause to be canceled, joint rates from points on their lines to points on other lines of railroad in large lumber consuming territory of the United States. In the original Star Grain case through rates were ordered by the Commission via the St. Louis Southwestern Railway Company and the intervenors.

Petitioners, in view of the foregoing, and upon information and belief, allege that the intervenors have stirred up and instigated litigation before the Interstate Commerce Commission and are participating herein for the sole purpose of monopolizing the transportation and trade in yellow pine lumber between points upon its line. Petitioners further allege that intervenors have in control and operation today a mill at Merryville, in the State of Louisiana, whose product is shipped to various points in the United States and is in competition with the lumber produced by the petitioner, Frost-Johnson Lumber Company.

Your petitioners further allege that the order complained of by  
300 petitioners herein, if allowed to remain effective, will make it easier for the intervenors to succeed in their plans to monopolize the aforesaid trade and transportation in yellow pine lumber.

Your petitioners therefore say that the aforesaid facts abundantly show that the order of the Commission constitutes an unjust discrimination and undue preference in violation of the Act to Regulate Commerce and should be enjoined and set aside."

The above being contained on pages 3, 4, 5, 6, 7, 8, 9 and 10 of said Reply.

Respectfully submitted,

ROBERT DUNLAP,  
T. J. NORTON,  
JAMES L. COLEMAN,

*Solicitors for said Intervening Petitioners.*

Chicago, March 3, 1913.



*Suggestions of the Atchison, Topeka and Santa Fe Railway Company and Gulf, Colorado and Santa Fe Railway Company, Intervening Petitioners, in Support of said Motion.*

(1) It is respectfully submitted that if all of the scandalous, impertinent and irrelevant matter above set forth were admitted to be true, such facts could have no bearing upon the question as to whether the tap-line allowances constitute an unlawful rebate or a violation of the Interstate Commerce law. Whether the order entered by the Interstate Commerce Commission in this case is correct or incorrect is a question which must be decided without any reference to the alleged practices of the intervening petitioners.

(2) The only jurisdiction which the United States Commerce Court has in this case is to review a certain order made by the Interstate Commerce Commission in the so-called tap-line case. If it were admitted that all of the scandalous, impertinent and irrelevant facts set forth in said reply are true, the Commerce Court would have no jurisdiction to make any order against The Atchison, Topeka and Santa Fe Railway Company or the Gulf, Colorado and Santa Fe Railway Company with reference to those facts.

For the above reasons it will serve no good purpose to burden the record with inquiries into the matters alleged in said Reply. Surely they will throw no light upon the question as to whether the order of the Interstate Commerce Commission was correct or incorrect; and as these alleged facts, if established, would not present any question which the Commerce Court has jurisdiction to determine, it would seem obvious that they should be stricken from the Reply.

Respectfully submitted,

ROBERT DUNLAP,

T. J. NORTON,

JAMES L. COLEMAN,

*Solicitors for said Intervening Petitioners.*

Chicago, March 3, 1913.

302 *Petition of Intervention of Railroad Commission of Louisiana.*

(Filed February 10, 1913.)

In the United States Commerce Court.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al.,  
Petitioners,

vs.

THE INTERSTATE COMMERCE COMMISSION et al., Respondents.

Motion on Behalf of the Railroad Commission of Louisiana for Permission to Intervene as Party Petitioner and to be Represented by Counsel and to File Brief in the Above Entitled Suit.

Comes now the Railroad Commission of Louisiana, through its undersigned counsel, and moves this Honorable Court for an order granting permission to it to enter appearance, to be made party intervener, as petitioner, to be represented by counsel, and to file brief in the above entitled suit, and for grounds for such motion, shows that it, through its then constituent members, J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, was an intervener in the Matter of the Tap Line Allowances and Divisions, being Docket Numbers 3400, Sub. 6, 3400 Sub. 7, 3403, 3411, 3412, 3513, 3514, 3524, 3551, 3552, and 3564, consolidated under Investigation and Suspension Docket No. 11, and known as the "Tap Line Case," before the Interstate Commerce Commission, in which case the said Interstate Commerce Commission made the orders attacked in the above entitled cause, and that it is interested in having the orders of the said Interstate Commerce Commission, insofar as they refer to petitioner, a common carrier, duly incorporated and operating under the laws of the State of Louisiana, annulled and set aside.

THE RAILROAD COMMISSION OF  
LOUISIANA,SHELBY TAYLOR, *Chairman;*

HENRY B. SCHREIBER,

B. A. BRIDGES,

*Commissioners,*

By RUFFIN G. PLEASANT,

*Attorney General, State of Louisiana.*

---

*Assistant Attorney General, Solicitors for  
the Railroad Commission of Louisiana,  
Intervening Petitioner.*

304

In the United States Commerce Court.

Docket No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY, & FROST-Johnson Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervener,

vs.

THE UNITED STATES OF AMERICA, Respondent.

To the Honorable the Judges of the United States Commerce Court:

The Railroad Commission of Louisiana, composed of Shelby Taylor, Chairman, Henry B. Schreiber and B. A. Bridges, Commissioners, a political corporation created, organized and existing under and by virtue of the laws of the State of Louisiana, having its domicile in the city of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, for the reasons hereinafter set forth, asks leave to intervene and be made a party to this cause, in behalf of plaintiffs.

### I.

Because the Mansfield Railway and Transportation Company is a railroad corporation duly and legally chartered, incorporated and existing under the laws of the State of Louisiana, and is under the laws of the State of Louisiana, a common carrier of freight and passengers, subject, as to its freight and passenger tariffs and  
305 service between and at points in the State of Louisiana, to regulation and control by the Railroad Commission of Louisiana. That the said Mansfield Railway and Transportation Company, petitioner, is operating a railroad in Louisiana, in accordance with the laws of the State of Louisiana, and is subject to the rules and regulations governing railroads adopted by the Railroad Commission of Louisiana. That said petitioner, the Mansfield Railway & Transportation Company, accepts and transports shipments and passengers at and between points on its said line of railroad in Louisiana and has filed with the Railroad Commission of Louisiana, tariffs containing class and commodity rates, which have been approved by the Railroad Commission of Louisiana to apply on shipments and passengers so transported. That it has been engaged in the business of a common carrier since the Railroad Commission of Louisiana was organized in 1898, and for some time previous thereto.

### II.

That there are numerous shippers and persons, who travel, living along the line of railroad of the Mansfield Railway and Transportation Company, who ship and receive interstate and intrastate freight over the said railroad and who are interested in securing fair and reasonable rates and adequate service, for the transportation of passengers and all classes and kinds of freight, including lumber, over the Mansfield Railway & Transportation Company's railroad.

That Act No. 195 of the Legislature of 1906 of the State of Louisiana provides:

"That power and authority is hereby vested in the Railroad Commission of Louisiana, and it is hereby made its duty, to appear, through any of its commissioners, or its secretary, or by a duly authorized attorney, before the Interstate Commerce Commission at Washington, D. C., or at any other place where the said Interstate Commerce Commission might be holding a session, whenever, in the judgment of the said Railroad Commission of Louisiana, the interests of shippers or consignees in the State of Louisiana may require it."

That acting under and by virtue of Act No. 195 of the General Assembly of the State of Louisiana of 1906, the Railroad Commission on the — day of —, 1912, adopted the hereto annexed resolution, and on January 31st, 1913, adopted the following resolution:

"Whereas, the Commission has learned that various suits have been filed in the Commerce Court at Washington, D. C., by the so-called 'tap lines' operating in the State of Louisiana; and

"Whereas, the following so-called 'tap lines,' Mansfield Railway & Transportation Company, Woodworth & Louisiana Central Railway Company, Limited, Victoria, Fisher & Western Railroad Company, and Louisiana & Pacific Railway Company, are among those 'tap lines' which have filed such suits, and which railways  
307 are duly chartered under the laws of the State of Louisiana as common carriers, and which, in fact, operating as common carriers in the said State, are under the supervision and control of the Railroad Commission of Louisiana; and

"Whereas, the said suits in the Commerce Court have been filed for the purpose of contesting the orders of the Interstate Commerce Commission, declaring that, in substance, such 'tap lines' are not common carriers as to the logs and lumber which they transport for their proprietary lumber companies; and

"Whereas, this Commission is of the opinion that this decision of the Interstate Commerce Commission is an unconstitutional interference with the rights of the said railway companies to receive revenue out of joint through rates for the transportation of lumber and logs over their lines in Louisiana destined to interstate points; and

"Whereas, it is the opinion of this Commission that the decision of the Interstate Commerce Commission in the 'tap line case' is detrimental to the interests of the shippers of the State of Louisiana, and deprives the shippers, served by said railway companies, of the right to ship logs and lumber over said railways at reasonable joint through rates and deprives the said railway companies from receiving a reasonable division out of joint through rates, which division of rates is the principal source of revenues of such carriers; and

"Whereas, if the said companies are not permitted to receive divisions of joint through rates on lumber and logs, they will be deprived of revenues for transporting the said logs and lumber,

thereby rendering it impossible to meet the operating expenses and fixed charges, and consequently preventing any extension, or hope of extension, or improvement, or hope of improvement of such railways:

"Therefore be it resolved, that the Railroad Commission of Louisiana, in behalf of the shippers of the State of Louisiana, hereby authorizes and instructs its attorney, the Assistant Attorney General of Louisiana, to intervene in the Commerce Court in the cases filed by the railway companies, hereinabove named, in support of their petitions, and to aid and assist, in every way possible, in having the Court recognize the said railway companies as common carriers of interstate shipments of logs and lumber, as they are recognized to be common carriers of all other classes and kinds of shipments."

#### IV.

That, pursuant to the various appropriate orders made by the Interstate Commerce Commission, in the case of Star Grain & Lumber Company et al. vs. Atchison, Topeka & Santa Fe Railway Company et al., Docket No. 1319, as set forth and referred to in Paragraphs III, IV, V, VI, VII, VIII and IX of the petition filed in this cause, the Railroad Commission of Louisiana, believing the shippers and general public living along the line of railroad of the Mansfield Railway & Transportation Company were interested in the proceeding instituted by the Interstate Commerce Commission, entitled:

"Investigation and Suspension Docket No. 11. In the Matter of the Investigation and Suspension of Schedules Canceling Through Rates with Certain Tap Line Connections."

on or about the 9th day of December, 1910, filed a petition of intervention on behalf of the shippers of the State of Louisiana, and were operating their railroads as common carriers under and by virtue of their charters, one of which railroads was that owned and operated by the Mansfield Railway & Transportation Company. That the said Railroad Commission of Louisiana thereafter filed a brief and took part in the oral argument before the Interstate Commerce Commission in support of the rights of the shippers who ship and receive freight, and of those who travel, over the lines of railroad owned and operated by the common carriers who, for the purposes of the proceedings before the Interstate Commerce Commission were, and have since been, designated as "tap lines." That one of the said common carriers in which the Railroad Commission was and is interested as a vehicle and means of intrastate and interstate transportation for the use of the public in the State of Louisiana, is the Mansfield Railway & Transportation Company, plaintiff in this cause.

#### V.

Your petitioner further states that the Mansfield Railway & Transportation Company is an important railroad, performing a valuable service in the development of the section of the State of Louisiana

310 through which its railroad runs; that the people living along such railroad are dependent upon it for the transportation of their products and their merchandise to and from the towns, cities and markets of the country. That they are entitled to ship at fair and reasonable local and joint through interstate, as well as intrastate, rates; that an important commodity shipped over the said railroad is lumber, and that, while the said railroad is required by the laws of the State of Louisiana and the rulings of the Railroad Commission of Louisiana, to establish reasonable local rates and joint through rates in connection with the trunk lines with which it connects on Louisiana intrastate shipments, and is permitted by the Interstate Commerce Commission to establish joint through rates, and receive divisions therefrom, to and from interstate points on all classes and commodities, except lumber, on shipments of lumber the said Mansfield Railway & Transportation Company is not permitted to receive a division out of joint through interstate rates.

## VI.

That in declaring an allowance out of joint through rates on lumber to be unlawful, the Interstate Commerce Commission has deprived the said Mansfield Railway & Transportation Company of an important source of revenue, which it earns by performing a transportation service, and to which it is entitled as a common carrier, the only legal restrictions upon such allowance being 311 that it must be reasonable, and in thus denying an allowance out of through interstate rates on lumber to the Mansfield Railway & Transportation Company, and depriving it of this important source of revenue, an undue burden and unnecessary hardship, and an unjust discrimination has been created and placed upon shippers of other commodities than lumber who use plaintiff's railroad, thus depriving the State of Louisiana of the natural development and increase in property values which follow the extension and improvement of railroad properties where the legitimate revenues from the operation of such properties lead to their betterment.

Your petitioner further avers that by depriving the Mansfield Railway & Transportation Company of a division of the earnings from interstate shipments of lumber, made in connection with the trunk lines, with which it connects, the Interstate Commerce Commission has thrown upon the smaller tonnage of general commodities, other than lumber, the entire burden of producing a sufficient revenue to pay all the fixed and operating expenses of the Mansfield Railway & Transportation Company, and, as a result of such a burden, your petitioner fears that the Mansfield Railway & Transportation Company's revenues will so diminish as to cause it to become bankrupt, and thereby seek, through proper legal means, to dissolve its charter, cease its operations, and go out of business as a common carrier, leaving many of the citizens of Louisiana, who are served by said Transportation Company, totally without 312 means of transportation. That such a result will deprive the citizens of Louisiana of their right to be served by common

carriers, properly organized under its laws, under the same conditions and circumstances as are accorded to the trunk lines.

### VII.

And petitioner further avers that should the Mansfield Railway & Transportation Company be deprived of its right to receive a fair division of reasonable joint through interstate rates for the transportation of lumber, it will cause an unjust discrimination, is arbitrary, unreasonable and unjust.

### VIII.

Your petitioner further avers that the Mansfield Railway & Transportation Company is a common carrier by virtue of its charter, that it holds itself out as such, constantly acts in that capacity, and has been so treated by those who it has served, by the great railroad systems with which it connects, by the State Board of Appraisers of the State of Louisiana, by the Railroad Commission of Louisiana, by the Supreme Court of the State of Louisiana, and, except as to the transportation of logs and lumber, in all other respects, by the Interstate Commerce Commission. That as a common carrier, exercising the right of eminent domain, it has received exemption from taxation under the Constitutional provisions, amendments thereof of 1908, of the State of Louisiana, having extended its lines during the period when such exemptions from taxation ran.

313

### IX.

Petitioner further avers that the Mansfield Railway & Transportation Company actually performs a part of the transportation of every shipment of lumber originating on its line, going to interstate destinations, and accepts all shipments tendered it for such transportation.

### X.

Your petitioner further avers that it is and has been the policy of the State of Louisiana to aid and encourage the development of its resources, the investment of capital in manufacturing and railroad industries, and to assist, whenever it can consistently do so, the producers and shippers of Louisiana, to secure and maintain equitable and fair rates, rules and regulations affecting the transportation of persons and property between points in the State of Louisiana, and points in other States. That the Railroad Commission of Louisiana, as the authorized representative of the shippers of the State of Louisiana, is vitally interested in the outcome of this suit, in that it involves property rights, industrial enterprises and transportation problems, which affect the commerce of its citizens.

Wherefore, petitioner, the Railroad Commission of Louisiana, prays leave to file this intervention, and that it be made a party to this proceeding, and that the orders of the Interstate Commerce Commission, dated May 14, 1912, and October 31st, 1912, be en-



joined, set aside and annulled, all as is prayed for in the prayer of the original petition filed herein.

314 And your petitioner prays for all other and further relief as in equity and good conscience they may be entitled to receive.

THE RAILROAD COMMISSION OF  
LOUISIANA,  
By W. M. BARROW,  
*Assistant Attorney General of Louisiana.*

STATE OF LOUISIANA,  
*Parish of ———:*

Shelby Taylor, being duly sworn on his oath, states that he is Chairman of the Railroad Commission of Louisiana, the petitioner herein; that he has read the above and foregoing petition, and is familiar with the facts therein stated; and that the allegations and averments of fact made are, to the best of his knowledge, information and belief, true, and he believes them to be true.

SHELBY TAYLOR,  
*Chairman Railroad Commission of Louisiana.*

Subscribed and sworn to before me, this 7th day of February, A. D. 1913.

[SEAL.]

R. H. FLOWER,  
*Ass't Sec'y of State.*

315 In the United States Commerce Court.

No. 92.

MASSFIELD RAILWAY & TRANSPORTATION COMPANY et al.

v.

UNITED STATES OF AMERICA et al.

*Order of Intervention.*

(Entered February 10, 1913.)

The Railroad Commission of Louisiana having filed and presented its petition for intervention herein and it appearing to the Court from the said petition that the petitioner has shown that it has sufficient interest in the proceedings herein to entitle it to intervene and be heard by its counsel:

It is ordered, That the Railroad Commission of Louisiana be and it is hereby allowed to intervene and become a party intervener and to be heard by its counsel in all the proceedings had and taken in the above entitled cause, the Court reserving the right at all times hereafter to enter such other and further order or orders concerning the right of the said intervener to appear and be heard herein, and to enter such rule or rules concerning the pleadings of the said inter-

venor and its course of procedure, as to the court shall seem wise and proper.

By the Court:

MARTIN A. KNAPP,  
*Presiding Judge.*

316

United States Commerce Court.

No. 92.

MANSFIELD RAILWAY AND TRANSPORTATION COMPANY et al.,  
Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COM-  
MERCE COMMISSION et al., Interveners.

*Order Designating Judge Carland to Hear Testimony.*

(Entered March 5, 1913.)

In said cause it is ordered that the Honorable John E. Carland, Associate Judge of this Court, be and he is hereby designated to hear testimony and to rule upon the admissibility of evidence.

MARTIN A. KNAPP,  
*Presiding Judge.*

317-332 *Certified Transcript of Testimony at Hearings at New Orleans, St. Louis, and Chicago, December, 1910, January and February, 1911, in Proceeding before the Interstate Commerce Commission, I. and S. Docket No. 11.*

(Filed in Commerce Court, March 26, 1913.)

*Note by the Clerk.*

(Certificates of the Secretary of the Interstate Commerce Commission to transcript of testimony, and testimony omitted here in printing because printed elsewhere in separate volumes.)

333-333a *Certified Copies of Exhibits in Proceeding Before Interstate Commerce Commission, I. & S. Docket No. 11. Filed May 8, 1913.*

The Interstate Commerce Commission certified to one set of exhibits applicable to cases Numbers 90, 91, 92 and 93, and which was used in the four cases. As directed by letter of H. M. Garwood, dated May 8, 1913, the following of those exhibits were printed for the use of the Commerce Court, viz:

*Note by the Clerk.*

(Exhibits filed in the proceedings before the Interstate Commerce Commission, omitted here in printing because printed elsewhere in separate volume.)

333b-346 As directed by the same letter of H. M. Garwood, dated May 8, 1913, the following of those exhibits were omitted from the printing, vis:

Two time tables, L. & P. Ry. Co.  
Petition, U. S. v. L. & P. Ry. Co.  
Mortgage, Long-Bell Lumber Co., L. & P. Ry. Co.  
Tariff sheets of various railroad companies.  
Division sheets, W. & L. C. Ry. Co.  
Statement, shipments of Gilmer Lumber Co.  
Statement, shipments of 51 concerns.  
Certain division sheets of various railroad companies.

Owing to the cumbrous and peculiar nature of the latter exhibits, they are not reproduced here. They are contained in the record on appeal in Louisiana & Pacific Railway Co. v. United States, No. 90, and are made a part hereof by reference the same as though fully incorporated herein.

*Note by the Clerk.*

(Order of Interstate Commerce Commission May 10, 1913, omitted here in printing because printed elsewhere in a separate volume.)



347 In the United States Commerce Court, January Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al.,  
Petitioners,

v.

UNITED STATES OF AMERICA et al., Respondents.

*Motion to Strike Out Evidence.*

(Filed June 2, 1913.)

Comes now United States of America, Respondent, in the above-entitled cause, by its counsel, and moves the court to strike from the record the testimony of the witnesses, taken before his Honor Judge Carland, at Washington, D. C., March 17, 18, and 19, 1913, and the exhibits accompanying the same, as the same was filed March 22, 1913, and printed under the direction of the clerk, for the following reasons, viz:

1. The said evidence is incompetent, irrelevant and immaterial.
2. The said evidence is not the evidence taken before the Interstate Commerce Commission, but is evidence taken subsequent to the time the order of the Interstate Commerce Commission was entered, and the Court is without power to annul the order of the Commission on a record other and different than that which was before the Commission at the time it entered its said order.
3. The said evidence does not show any lack of power or authority of the Interstate Commerce Commission to enter the said order or that it erred as a matter of law in so doing.
4. The said evidence does not show that the petitioners are deprived of any right under the Constitution and laws of the United States.
5. For other reasons which will be pointed out upon the hearing hereof.

BLACKBURN ESTERLINE,  
*Special Assistant to the Attorney General.*

June 2, 1913.

348

*Journal Entries.*

Case- Nos. 90, 91, 92, and 93.

## No. 90.

LOUISIANA & PACIFIC RAILWAY Co. et al., Petitioners,  
vs.  
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE  
COMMERCE COMMISSION et al., Interveners.

## No. 91.

WOODWORTH & LOUISIANA CENTRAL RY. Co., LIMITED, et al.,  
Petitioners,  
vs.  
THE UNITED STATES OF AMERICA et al., Respondents; INTERSTATE  
COMMERCE COMMISSION et al., Interveners.

## No. 92.

MANSFIELD RAILWAY & TRANSPORTATION Co. et al., Petitioners,  
vs.  
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COM-  
MERCE COMMISSION et al., Interveners.

## No. 93.

VICTORIA, FISHER & WESTERN R. R. Co. et al., Petitioners,  
vs.  
THE UNITED STATES OF AMERICA, Respondent; INTERSTATE COM-  
MERCE COMMISSION et al., Interveners.

## Proceedings of June 3, 1913.

Said causes came on before the Court for final hearing upon the merits, and the arguments of counsel were commenced, Mr. Luther M. Walter appearing on behalf of the petitioners and Mr. W. M. Barrow on behalf of the Railroad Commission of Louisiana.

## Proceedings of June 4, 1913.

Said causes came on before the Court for further hearing upon the merits, and the arguments of counsel were continued, Mr. Blackburn Esterline, Special Assistant to the Attorney General, appearing on behalf of the United States, Mr. James L. Coleman on behalf of the Atchison, Topeka & Santa Fe Railway Company, and Mr. Charles W. Needham on behalf of the Interstate Commerce Commission.

349-378

## Proceedings of June 5, 1913.

Said causes came on before the court for further hearing upon the merits, and the arguments of counsel were continued, Mr. Charles W. Needham appearing on behalf of the Interstate Commerce Commission and Mr. H. M. Garwood on behalf of the petitioners.

## Proceedings of June 6, 1913.

Said causes came on before the court for final hearing upon the merits, and the arguments of counsel were concluded, Mr. H. M. Garwood appearing on behalf of the petitioners. Thereupon Mr. Garwood was given leave to file a memorandum of additional authorities, and Mr. Esterline was given leave to file a memorandum as to exhibits. Thereupon the causes were taken under advisement by the Court.

*Note by the Clerk.*

(Opinion by Mack, J., Nov. 26, 1913, omitted here in printing because printed elsewhere in a separate volume.)

379

*Final Decree.*

(Entered November 28, 1913.)

United States Commerce Court.

No. 92.

MANSFIELD RAILWAY &amp; TRANSPORTATION COMPANY et al., Petitioners,

v.

THE UNITED STATES OF AMERICA, Respondent.

The above case having been submitted for final hearing upon pleadings and proofs, and due consideration thereof having been had, It is ordered and adjudged that the motion made by the Interstate Commerce Commission to strike from the record all oral evidence taken in this Court be and the same is hereby granted.

It is further ordered and adjudged that the motion to dismiss for want of jurisdiction be and the same is hereby denied.

It is further ordered and adjudged that that portion of the amended Order of the Interstate Commerce Commission made October 30th, 1912, which is in the following language:

"That the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports:

3. It is Ordered, That the principal defendants, the Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway &

380

Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company, and Mobile and Ohio Railroad Company be, and they are hereby, notified and required to cease and desist, and for a period of two years hereafter or until otherwise ordered, to abstain from making any such allowances to any of the above named parties to the record in respect of any such above described service."

be and the same is hereby vacated and set aside as to the petitioners herein.

By the Court,

MARTIN A. KNAPP,

*Presiding Judge.*

November 28, 1913.

381 In the United States Commerce Court, June Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and Frost Johnson Lumber Company, Petitioners, Railroad Commission of Louisiana, Intervenor,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company, Intervening Respondents.

*Petition for Appeal.*

(Filed November 29, 1913.)

The United States, respondent, and the Interstate Commerce Commission, intervenor, feeling themselves aggrieved by the final decree entered in the above-entitled cause on November 28, 1913, by their counsel, pray an appeal to the Supreme Court of the United States from the said final decree.

The particulars wherein the United States and the Interstate Commerce Commission consider said final decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

And the United States, respondent, and the Interstate Commerce Commission, intervenor, further pray that a transcript of the record proceedings, and papers on which the said final decree was made and entered, duly authenticated, may be transmitted forth

382 with to the Supreme Court of the United States.

Washington, November 29, 1913.

J. C. McREYNOLDS,

*Attorney General of the United States.*

CHAS. W. NEEDHAM,

*Solicitor for the Interstate Commerce Commission.*

Allowed:

MARTIN A. KNAPP,

*Presiding Judge United States Commerce Court.*

383 In the United States Commerce Court, June Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al., Petitioner,

v.

THE UNITED STATES OF AMERICA et al., Respondents.

*Assignment of Errors.*

(Filed November 29, 1913.)

Come now the United States of America, by its Attorney General, and the Interstate Commerce Commission, by its Solicitor, and in connection with their petition for appeal, file the following assignment of errors on which they will rely on said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered against them on November 28, 1913, in the above-entitled cause.

The Commerce Court erred:

### I.

In not granting the motion to dismiss for want of jurisdiction, and in holding and adjudging that the Commerce Court had jurisdiction to hear and determine the cause.

### II.

In holding and adjudging that the order of the Interstate Commerce Commission sought to be annulled and enjoined is an affirmative order within the power of the Court to review, and in not holding and adjudging that the same is a negative order and beyond the power of the court to review.

384

### III.

In not dismissing the petition for the (a) same does not set forth any cause of action, and is insufficient to warrant the relief granted, or to form the basis for any relief from the order of the commission; (b) nor have the said petitioners shown that there is any equity in the said petition upon which to grant the relief prayed, or to form the basis for any relief from the order of the commission; (c) nor have the petitioners shown that in making its said order the Interstate Commerce Commission acted beyond or without its jurisdiction or exceeded any power or authority conferred upon it by the act to regulate commerce; (d) nor have the petitioners shown that in making its said order the Interstate Commerce Commission violated any right of the said petitioners protected by the Constitution of the United States, or any other right of the said petitioners over which this court may exercise jurisdiction.



## IV.

In holding and adjudging that with relation to the freight of its proprietary lumber companies the Mansfield Railway & Transportation Company is a common carrier by railroad engaged in commerce among the several states and subject to the act to regulate commerce, approved February 4, 1887, and the various acts amendatory thereof or supplementary thereto.

## V.

In holding that the Commission "impliedly, if not expressly, held" that the petitioner was a common carrier, and therefore entitled to a division out of main line lumber rates for services which it performed for its proprietary lumber company.

385

## VI.

In holding that a mere switching movement could be made a part of a through route instead of holding that the switching movement was an independent movement additional to the line haul.

## VII.

In holding that the Commission was without power to inquire into and go behind the mere forms of organization and methods of doing business by the lumber company and the tap line, and ascertain the true facts regarding the relations between the two companies; and whether the tap line was used as a medium for securing rebates on the lumber company's traffic.

## VIII.

In holding that the Commission, after finding that the tap line was a medium for the payment of rebates on the lumber company's traffic, could not order the main-line carriers to desist from making such payments.

## IX.

In not holding and adjudging that the organization of the Mansfield Railway & Transportation Company and the transfer to it by the lumber companies of the railway tracks and equipment was the creation of a device for the purpose of attempting to shift the old open and illegal rebating transactions between the lumber companies, as shippers, and the trunk lines, as carriers, to private transactions between the Mansfield Railway & Transportation Company and the trunk lines, in order to evade the provisions of the act to regulate commerce, and, simultaneously, to maintain the advantages of the parties.

## X.

386 In not holding and adjudging that the lumber companies are making the transportation of their enormous traffic a matter of bargain and sale, and with the power wielded in

controlling the routing to compel the trunk lines to make allowances to the Mansfield Railway & Transportation Company, resulting in undue and illegal preferences and discriminations forbidden by the act to regulate commerce in favor of the lumber companies and against other shippers.

#### XI.

In not holding and adjudging upon the facts found by the commission that the transportation of the products of the proprietary companies by the petitioner is not transportation by a common carrier.

#### XII.

In not holding and adjudging that the conclusions and orders of the commission are founded upon substantial evidence and are not arbitrary, and in holding and adjudging that certain parts of the order of the commission are arbitrary, null, and void, as to the petitioners.

#### XIII.

In vacating and setting aside as to the petitioners the portions of the amended order of the Interstate Commerce Commission made October 30, 1912 which declared the tracks and equipment of the petitioners to be plant facilities, and the service rendered thereon to be a plant service, and directing the trunk line carriers to cease and desist from making any allowances to the petitioners in respect to any such plant service.

#### XIV.

387 In holding and adjudging that a common carrier may, as to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services as distinguished from transportation services, and at the same time holding and adjudging that the actual service rendered by the tap-line from the time it takes the logs until it delivers the finished product to the trunk line is the same for proprietary and non-proprietary mills, and as this is held by the Interstate Commerce Commission to be a transportation service by an interstate common carrier as to the latter, it must be held to be a similar service as to the former.

#### XV.

In disposing of the four separate and distinct cases in a single blanket opinion of general observations, without regard to the peculiar facts of each particular case, after holding that the orders of the commission are separate and distinct as to each of the tap-lines, and are expressly based upon a careful investigation of and separate findings in relation to each of the companies.

#### XVI.

In granting the relief prayed by the petitioners, or a substantial part thereof.

Wherefore the United States and the Interstate Commerce Commission pray that the said final decree of the Commerce Court, entered November 28, 1913, be reversed, annulled and set aside, and for such other and further order as may be appropriate.

J. C. McREYNOLDS,

*Attorney General of the United States.*

CHAS. W. NEEDHAM,

*Solicitor for the Interstate Commerce Commission.*

388 In the United States Commerce Court, June Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and Frost-Johnson Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervenor,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, Atchison, Topeka & Santa Fe Railway Company, and Gulf, Colorado & Santa Fe Railway Company, Intervening Respondents.

*Order Allowing Appeal.*

(Entered November 29, 1913.)

In the above-entitled cause, the United States and the Interstate Commerce Commission, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of the Commerce Court entered November 28, 1913, and having at the same time made and filed an assignment of errors, and having in all respects conformed to law and the rules of court—

It is ordered and decreed that the said appeal be and the same is hereby, allowed, as prayed, and made returnable thirty days from the date hereof. And the clerk is directed to transmit forthwith a properly authenticated transcript of the records, papers, and proceedings to the Supreme Court of the United States.

November 29, 1913.

MARTIN A. KNAPP,

*Presiding Judge United States Commerce Court.*

389 In the United States Commerce Court, June Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-Johnson Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervener,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, The Atchison, Topeka & Santa Fe Railway Company, and The Gulf, Colorado & Santa Fe Railway Company, Interveners.

*Petition for Appeal.*

(Filed November 29, 1913.)

The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, intervenors, feeling themselves aggrieved by the final decree entered in the above entitled cause on November 28, 1913, by their counsel pray an appeal to the Supreme Court of the United States from the said final decree.

The particulars wherein The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company consider said final decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

And The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, intervenors, further pray that a transcript of the record, proceedings, and papers on which the said final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

Washington, D. C., November 29, 1913.

GARDINER LATHROP,

Per E. B.,

EVANS BROWNE,

*Solicitors for The A., T. & S. F. Ry. Co.*

*and G., C. & S. F. Ry. Co., Interveners.*

Allowed:

MARTIN A. KNAPP,

*Presiding Judge United States Commerce Court.*

390 In the United States Commerce Court, June Session, 1913.

No. 92.

MANSEFIELD RAILWAY & TRANSPORTATION COMPANY et al.,  
Petitioners,

v.

UNITED STATES OF AMERICA et al., Respondents.

*Assignment of Errors.*

(Filed November 29, 1913.)

Comes now The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, by their attorneys, and in connection with their petition for appeal, file the following assignment of errors on which they will rely on said appeal to the Supreme Court of the United States from the final order or decree of the Commerce Court, entered against them on November 28, 1913, in the above entitled cause.

The Commerce Court erred—

I.

In not granting the motion to dismiss for want of jurisdiction, and in holding and adjudging that the Commerce Court had jurisdiction to hear and determine the cause.

II.

In holding and adjudging that the order of the Interstate Commerce Commission sought to be annulled and enjoined is an affirmative order within the power of the Court to review, and in not holding and adjudging that the same is a negative order and beyond the power of the Court to review.

III.

In not dismissing the petition for the reason that (a) the same does not set forth any cause of action, and is insufficient to  
391 warrant the relief granted, or to form the basis for any relief from the order of the commission; (b) nor have the said petitioners shown that there is any equity in the said petition upon which to grant the relief prayed, or to form the basis for any relief from the order of the commission; (c) nor have the petitioners shown that in making its said order the Interstate Commerce Commission acted beyond or without its jurisdiction or exceeded any power or authority conferred upon it by the act to regulate commerce; (d) nor have the petitioners shown that in making its said order the Interstate Commerce Commission violated any right of the said petitioners protected by the Constitution of the United States, or any other right of the said petitioners over which this Court may exercise jurisdiction.

## IV.

In holding and adjudging that with relation to the freight of its proprietary lumber company, the Mansfield Railway and Transportation Company is a common carrier by railroad engaged in commerce among the several states and subject to the act to regulate commerce, approved February 4, 1887, and the various acts amendatory thereof or supplementary thereto.

## V.

In holding that the Commission "impliedly, if not expressly, held" that the petitioner was a common carrier, and therefore entitled to a division out of main line lumber rates for services which it performed for its proprietary lumber company.

## VI.

392 In holding that a mere switching movement could be made a part of a through route instead of holding that the switching movement was an independent movement additional to the line haul.

## VII.

In holding that the Commission was without power to inquire into and go behind the mere forms of organization and methods of doing business by the lumber company and the tap line, and ascertain the true facts regarding the relations between the two companies, and whether the tap line was used as a medium for securing rebates on the lumber company's traffic.

## VIII.

In holding that the Commission after finding that the tap line was a medium for the payment of rebates on the lumber company's traffic, could not order the main line carriers to desist from making such payments.

## IX.

In not holding and adjudging that the organization of the Mansfield Railway and Transportation Company and the transfer to it by the lumber company of the railway tracks and equipment was the creation of a device for the purpose of attempting to shift the old open and illegal rebating transactions between the lumber companies, as shippers, and the trunk lines, as carriers, to private transactions between the Mansfield Railway and Transportation Company and the trunk lines, in order to evade the provisions of the act to regulate commerce, and, simultaneously, to maintain the advantages of the parties.

## X.

In not holding and adjudging that the lumber companies are making the transportation of their enormous traffic a matter of bar-

gain and sale, and with the power wielded in controlling the routing, are forcing the trunk lines to make allowances to the Mans-  
393 field Railway and Transportation Company, resulting in undue and illegal preferences and discriminations forbidden by the act to regulate commerce in favor of the lumber companies and against other shippers.

### XI.

In not holding and adjudging upon the facts found by the Commission that the transportation of the products of the proprietary company by the petitioner is not transportation by a common carrier.

### XII.

In not holding and adjudging that the conclusions and orders of the Commission are founded upon substantial evidence and are not arbitrary, and in holding and adjudging that certain parts of the order of the Commission are arbitrary, null, and void, as to the petitioners.

### XIII.

In vacating and setting aside as to the petitioners the portions of the amended order of the Interstate Commerce Commission made October 30, 1912, which declared the tracks and equipment of the petitioners to be plant facilities, and the service rendered thereon to be a plant service, and directing the trunk line carriers to cease and desist from making any allowances to the petitioners in respect to any such plant service.

### XIV.

In holding and adjudging that a common carrier may, as to certain shippers, and particularly as to a proprietary company, be a mere plant facility and perform merely plant or industrial services as distinguished from transportation services, and at the same time holding and adjudging that the actual service rendered by the tap line from the time it takes the logs until it delivers the finished product to the trunk line is the same for proprietary and non-proprietary mills, and as this is held by the Interstate Commerce  
394 Commission to be a transportation service by an interstate common carrier as to the latter, it must be held to be a similar service as to the former.

### XV.

In disposing of the four separate and distinct cases in a single blanket opinion, without regard to the peculiar facts of each particular case, after holding that the orders of the Commission are separate and distinct as to each of the tap lines, and are expressly based upon a careful investigation of and separate findings in relation to each of the companies.



## XVI.

In granting the relief prayed by the petitioners, or a substantial part thereof.

Wherefore, The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company pray that the said final decree of the Commerce Court, entered November 28, 1913, be reversed, annulled, and set aside, and for such other and further order as may be appropriate.

GARDINER LATHROP,  
EVANS BROWNE,

*Attorneys for The Atchison, Topeka & Santa Fe  
Railway Company, and the Gulf, Colorado &  
Santa Fe Railway Company, Intervenor.*

395 In the United States Commerce Court, June Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and Frost-Johnson Lumber Company, Petitioners; Railroad Commission of Louisiana, Intervenor.

v.

UNITED STATES OF AMERICA et al., Respondents.

*Order Allowing Appeal.*

(Entered November 29, 1913.)

In the above entitled cause, The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of the Commerce Court entered November 28, 1913, and having at the same time made and filed an assignment of errors, and have in all respects conformed to law and the rules of court—

It is ordered and decreed That the said appeal be and the same is hereby, allowed, as prayed, and made returnable thirty days from the date hereof. And the Clerk is directed to transmit forthwith a properly authenticated transcript of the records, papers, and proceedings to the Supreme Court of the United States.

November 29, 1913.

MARTIN A. KNAPP,  
*Presiding Judge, United States Commerce Court.*

In the United States Commerce Court, June Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-JOHNSON LUMBER COMPANY, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE Commission, The Atchison, Topeka & Santa Fe Railway Company, and the Gulf, Colorado & Santa Fe Railway Company and Railroad Commission of Louisiana, Intervenors.

*Bond on Appeal.*

(Filed December 5, 1913.)

Know all men by these presents, That we, The Atchison, Topeka & Santa Fe Railway Company, and the Gulf, Colorado & Santa Fe Railway Company, as principals, and the National Surety Company, a corporation of the State of New York, as surety, are held and firmly bound unto the Mansfield Railway & Transportation Company and the Frost-Johnson Lumber Company, in the sum of Five Hundred Dollars (\$500.00), to be paid to the Mansfield Railway & Transportation Company and the Frost-Johnson Lumber Company. We bind ourselves and each of our successors and assigns jointly and severally by these presents.

Sealed with our seals this fifth day of December, A. D. nineteen hundred and thirteen.

Whereas, Heretofore, to wit, on the 28th day of November, 1913, in a suit pending in the United States Commerce Court, and numbered 92 on the docket of said Court, wherein the Mansfield Railway & Transportation Company and the Frost-Johnson Lumber Company were petitioners, and the United States of America was respondent, and The Atchison, Topeka & Santa Fe Railway Company, Gulf, Colorado & Santa Fe Railway Company, Interstate Commerce Commission, and the Railroad Commission of Louisiana, were intervenors, an order, judgment and decree was rendered against said respondents and intervenors, and

Whereas, Said The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, have appealed from said order and decree to the Supreme Court of the United States, and have obtained citation directed to the said Mansfield Railway & Transportation Company and the Frost-Johnson Lumber Company, citing and admonishing them and each of them to be and appear at a session of the Supreme Court of the United States, to be held at the city of Washington, within thirty days from the allowance of the said appeal.

Now, the condition of the above obligation is such, that if the said

The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company shall prosecute said appeal to effect and shall pay all costs, if they shall fail to make their appeal good, then the above obligation to be void, otherwise to remain in full force and effect.

THE ATCHISON, TOPEKA & SANTA FE  
RAILWAY COMPANY,

By ALDIS B. BROWNE,  
EVANS BROWNE,

*Its Attorneys.*

GULF, COLORADO & SANTA FE RAIL-  
WAY COMPANY,

By ALDIS B. BROWNE,  
EVANS BROWNE,

*Its Attorneys.*

[SEAL.] NATIONAL SURETY COMPANY,  
By W. H. RONSAVILLE.

The above and foregoing bond approved and ordered filed this 5th day of December, A. D. nineteen hundred and thirteen.

JOHN E. CARLAND, *Judge.*

399 In the United States Commerce Court, June Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY et al.

v.

THE UNITED STATES OF AMERICA.

*Præcipe for Record.*

To the Clerk:

You will please prepare a transcript of the record in the above-entitled cause, to be filed in the office of the clerk of the Supreme Court of the United States, upon the appeal from the final order or decree of the Commerce Court entered November 28, 1913, and include in said transcript the following pleadings, proceedings and papers on file or of record, to wit:

Petition with exhibits attached, filed January 14, 1913.

Exhibit to petition, filed February 24, 1913.

Return of service on all respondents, filed January 16, 1913.

Motion of the United States to dismiss, filed February 8, 1913.

Order denying motion to dismiss, entered February 24, 1913.

Answer of the United States, filed March 18, 1913.

Answer of the Interstate Commerce Commission, filed February 8, 1913.

Petition of A., T. & S. F. Ry. Co. et al. to intervene, filed February 10, 1913.

Order granting the same, entered February 10, 1913.

Reply to intervening petition of A., T. & S. F. Ry. Co., filed February 26, 1913.

Motion of A., T. & S. F. Ry. Company et al. to strike, filed March 8, 1913.

400 Motion of Railroad Commission of Louisiana to intervene, filed February 10, 1913.

Order granting the same, entered February 10, 1913.

Order designating Judge Carland to take testimony, entered March 5, 1913.

Certified transcript of testimony at hearings in proceedings before Interstate Commerce Commission, I. & S. Docket No. 11, filed March 26, 1913.

Certified copies of exhibits in proceeding before Interstate Commerce Commission, I. & S. Docket No. 11, filed May 8, 1913.

Order of Interstate Commerce Commission, Docket No. 3400, Sub. 7, I. & S. Docket No. 11, filed May 10, 1913.

Motion of the United States to strike out evidence, filed June 2, 1913.

Journal entries as to final hearing.

Opinion of the Commerce Court.

Final decree of the Commerce Court.

Petition for appeal.

Assignment of errors.

Order allowing appeal.

Citation on appeal.

Petition for appeal of A., T. & S. F. Ry. Co. et al.

Assignment of errors, same.

Order allowing appeal.

Bond of A., T. & S. F. Ry. Co. et al.

Citation on appeal, same.

BLACKBURN ESTERLINE,

*Special Assistant to the Attorney General  
for the United States.*

CHAS. W. NEEDHAM,

*Solicitor for Interstate Commerce Commission.*

GARDINER LATHROP,

Per E. B.,

EVANS BROWNE,

*Solicitors for A., T. & S. F. Ry. Co. and  
G., C. and S. F. Ry. Co.*

#### 401 DISTRICT OF COLUMBIA, ss:

Blackburn Esterline, being first duly sworn, on his oath deposes and says, that on Monday, December 15, 1913, he mailed a certified copy of the foregoing præcipe for record to Wylie M. Barrow, Solicitor for Railroad Commission of Louisiana, Baton Rouge, Louisiana, and deposited the same, with a letter of transmittal, in the United States mail at Washington, D. C., and holds the acknowledgment of the said Wylie M. Barrow therefor.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this twenty-second day of December, A. D., nineteen hundred and thirteen.

[Seal J. H. Mackey, Notary Public, District of Columbia.]

J. H. MACKEY,  
*Notary Public, District of Columbia.*

402 In the United States Commerce Court, June Session, 1913.

No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY  
v.  
THE UNITED STATES OF AMERICA.

Hugh P. Lutz, being duly sworn, deposes and says, that on December 17th, 1913, he served a certified copy of the præcipe for record, filed by the appellants in the above-entitled cause, upon Mr. Luther M. Walter, Solicitor for appellees by delivering the same, in his absence, at his usual place of business, Room 557, The Rookery, Chicago, Illinois, to Mr. Edward J. Long, who received and accepted the same for him.

HUGH P. LUTZ.

Subscribed and sworn to before me this 17th day of December, A. D. 1913.

[Seal William A. Small, Notary Public, Cook County, Ill.]

WILLIAM A. SMALL,  
*Notary Public.*

403 United States Commerce Court. Filed Nov. 29, 1913.  
G. F. Snyder, Clerk.

92.

36.

*Citation on Appeal.*

UNITED STATES OF AMERICA, *vs.*:

To Mansfield Railway & Transportation Company, Frost-Johnson Lumber Company, Railroad Commission of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court, wherein the United States and the Interstate Commerce Commission are appellants and you are appellees, to show cause, if any there be,

why the decree rendered against the said appellants, as in the appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 29th day of November, A. D. 1913.

MARTIN A. KNAPP,  
*Presiding Judge of the United States  
Commerce Court.*

Service of a copy of the within citation is hereby admitted this 2nd day of December, A. D. 1913.

H. M. GARWOOD,  
W. R. THURMOND,  
LUTHER M. WALTER,  
W. M. BARROW,  
*Solicitors for Appellera.*

404 United States Commerce Court. Filed Nov. 29, 1913.  
G. F. Snyder, Clerk.

92.

40.

*Citation on Appeal.*

UNITED STATES OF AMERICA, ss:

To Mansfield Railway & Transportation Company and Frost-Johnson Lumber Company and Railroad Commission of Louisiana:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the Clerk's Office of the United States Commerce Court, wherein The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin A. Knapp, Presiding Judge of the United States Commerce Court, this 29th day of November, A. D. 1913.

MARTIN A. KNAPP,  
*Presiding Judge United States Commerce Court.*

Service of a copy of the within citation is hereby admitted this 2nd day of December, A. D. 1913.

H. M. GARWOOD,  
W. R. THURMOND,  
LUTHER M. WALTER,  
W. M. BARROW,  
*Solicitors for Appellees.*

405

## United States Commerce Court.

## No. 92.

MANSFIELD RAILWAY & TRANSPORTATION COMPANY and FROST-  
JOHNSON LUMBER COMPANY, Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE  
Commission, Atchison, Topeka & Santa Fe Railway Company,  
Gulf, Colorado & Santa Fe Railway Company, Railroad Commis-  
sion of Louisiana, Interveners.

UNITED STATES OF AMERICA, ss:

I, G. F. Snyder, Clerk of the United States Commerce Court, do hereby certify that the foregoing transcript constitutes a complete record of the proceedings had and papers filed in the above entitled cause, made in accordance with the præcipe filed in the Clerk's office of said Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States Commerce Court this 27th day of December, A. D. 1913.

[Seal of the United States Commerce Court.]

G. F. SNYDER, *Clerk.*

406 In the Supreme Court of the United States, October Term,  
1913.

## No. 833.

UNITED STATES OF AMERICA et al., Appellant,

v.

MANSFIELD RY. &amp; TRANSPORTATION Co. et al.

*Statement of Errors.*

To the Clerk:

In pursuance of Paragraph 9, Rule 10, Rules of the Supreme Court, the United States, appellant, states that it intends to rely on each and all of the errors assigned.

JNO. W. DAVIS,  
*Solicitor General.*

DISTRICT OF COLUMBIA, ss:

Blackburn Esterline, being duly sworn, deposes and says, that on Tuesday, January 20, 1914, he sent a true copy of the foregoing statement to each of the following named persons: Luther M. Walter, Esq., The Rookery, Chicago, Ill., and Hon. Wylie M. Barrow, Assistant Attorney General of Louisiana, Baton Rouge, La., Coun-



sel for the Appellees, by depositing the same in the post office at Washington, D. C., in envelopes addressed to each of them.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this 20th day of January, 1914.

[Seal J. H. Mackey, Notary Public, District of Columbia.]

J. H. MACKEY,

*Notary Public, D. C.*

I concur in the above designation.

CHAS. W. NEEDHAM,

*Solicitor for Interstate Commerce*

*Commission, Appellant.*

407 In the Supreme Court of the United States, October Term, 1913.

No. 833.

UNITED STATES OF AMERICA et al., Appellants,

v.

MANSFIELD RY. & TRANSPORTATION Co. et al.

*Instructions to Omit Certain Matter from the Printing.*

To the Clerk:

In printing the separate record in the foregoing appeal, you will please omit the following, viz:

1. The Report and Supplemental Report, and the Order and the Amended Order of the Interstate Commerce Commission.

2. Certified transcript of testimony at hearings in proceedings before the Interstate Commerce Commission, I. & S. Docket No. 11, filed March 26, 1913, consisting of 4 printed volumes marked, respectively, Volumes I, II, III, IV, and the certificates of Secretary McGinty, attached thereto.

3. Order of Interstate Commerce Commission in Docket No. 3400, Sub. 7, I. & S. Docket No. 11-A, filed May 10, 1913.

4. Certified copies of exhibits in proceedings before the Interstate Commerce Commission, I. & S. Docket No. 11, filed May 8, 1913, consisting of 1 printed volume marked, Volume V.

5. Opinion of the United States Commerce Court.

408 Other instructions are separately given to print in a single volume certain parts of the matter so to be omitted.

JNO. W. DAVIS,

*Solicitor General.*

409 [Endorsed:] File No. 23,984. Supreme Court U. S. October term, 1913. Term No. 833. The United States et al., Appellants, vs. Mansfield Railway & Transportation Company

et al. Statement of The United States as to errors intended to be relied on and instructions to omit certain parts of the record in printing. Filed January 21, 1914.

Endorsed on cover: File No. 23,984. U. S. Commerce Court. Term No. 833. The United States and Interstate Commerce Commission, appellants, vs. Mansfield Railway & Transportation Company, Frost-Johnson Lumber Company and Railroad Commission of Louisiana. File No. 23,985. Term No. 834. The Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company, appellants, vs. Mansfield Railway & Transportation Company et al. Filed December 29th, 1913. File Nos. 23,984 and 23,985.